

(2010) 04 KAR CK 0047
In the Karnataka High Court
Case No : W.A. No. 6352 of 2009 (LR)

Tippavva, Since deceased by her LRs Sri. Rangappa
Machagar @ Ronad and Others

APPELLANT

Vs

The Deputy Commissioner, Bagalkot, Dist: Bagalkot and
Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Citation : (2010) 04 KAR CK 0047

Hon'ble Judges : N. Ananda, J;D.V. Shylendra Kumar, J

Bench : Division Bench

Advocate : S.S. Patil and Sri. H.N. Gularaddi, for the Appellant;

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—This is a Writ Appeal u/s 4 of the Karnataka High Court Act by the very writ petitioner in W.P. No. 11774/2008, being aggrieved by the order dated 26.08.2009 passed by the learned Single Judge of this Court dismissing the writ petition. The legal representatives of the first petitioner viz., Tippavva who are already on record as other petitioners have come up in Appeal, being aggrieved by the dismissal of the Writ Petition.

2. The writ petitioners had claimed before the learned Single Judge that the writ petitioners' fore fathers were tenants in respect of agricultural land measuring 12 acres 12 guntas located in Sy. No. 173 of Adagal village, Badami Taluq, since their fore fathers, that by mistake or otherwise, their predecessors, the husband of the first writ petitioner Rangappa Machagar along with Parasappa Hanumappa Kollanna had made an application u/s 25 of the Mysore Tenancy Act, before the competent authority for surrendering their tenanted lands in favour of the land lord and the authority had passed an order on the said application on 14.07.1971.

3. Albeit the order of surrender in favour of the land lord, it is the claim of the petitioners that their forefathers nevertheless continued to remain in possession

of the land and cultivated the land as earlier.

4. It is the further case of the petitioners that though the Land Reforms Act came to be amended by Act 1/1974 w.e.f. 01.03.1974 and petitioners were persons who were entitled to file Form No. 7 seeking occupancy rights in their favour, had for some reason or the other, failed to make such application before the Land Tribunal; that they had not availed even the later opportunity for making Form No. 7A application and in this state of affairs, they continued to remain in possession of the land and cultivating the land.

5. It is claimed that recently, some persons claiming to be the purchasers of the subject land, based on the surrender order passed by the authority had tried to disturb the possession of the petitioners and in the light of such disturbance, the petitioners approached the Revenue authorities to protect their possession and to retain their names in the revenue records, but the revenue authorities having failed to heed to their request and ultimately the khatha of the land in revenue records having been mutated in the names of purchasers, arrayed as respondents 8 and 9 by name Balappa and Hanumappa, the writ petitioners aggrieved by this order which had been affirmed by the Deputy Commissioner in a proceedings u/s 136(3) of the Karnataka Land Revenue Act have approached this Court for relief that the learned Single Judge declined to interfere with the said order and dismissed the writ petition and therefore, the petitioners have come up with the present Writ Appeal.

6. Appearing on behalf of the appellants, submissions of Sri. S.S. Patil, learned counsel is that the appellants are persons who have remained in possession of the agricultural lands which they had been cultivating ever since and prior to them, their fore fathers were cultivating the same. They are in possession and cultivation of these lands from generations and they are deemed tenants u/s 4 of the Karnataka Land Reforms Act. That in terms of the provisions of Section 44 of the Karnataka Land Reforms Act, 1961, the land of this nature which is in possession and cultivation of the tenant, vested in the State and if so, the State having become the owner of the land even on the appointed date, the erstwhile land lords did not have any right, title or interest to sell the land after 01.03.1974 when the land already vested in State Government. Therefore, the purchasers did not get any title to the land and are not entitled to disturb the peaceful possession and cultivation of the land by the appellants. In this view of the matter, the learned Single Judge has committed an error in dismissing the Writ Petition. By applying Section 44 of the Act, the learned Single Judge should have quashed the order of the Revenue Authorities and should have declared that the appellants are the tenants in possession of the land.

7. The Appeal, though had been listed for the third time for orders regarding non compliance of office objections as pointed out by the registry, we have taken up the Appeal for examination on merits.

8. On examination of the arguments addressed by Sri. S.S. Patil, learned counsel

for the Appellants, we cannot agree with the learned counsel that the learned Single Judge has committed an error in dismissing the writ petition.

9. Even as per the pleadings of the appellants, the appellants cannot claim the legal status as tenants on and after their predecessors surrendering the possession of the land in favour of the land lord and before the authority in the manner as recognized by law and an order to this effect having been made by the competent authority on 14.07.1971.

10. Assuming that the appellants had continued to remain in possession of the lands, it cannot be in the capacity of a tenant but in any other capacity, whether they were/are in possession or not is a question of fact which cannot be gone into in writ jurisdiction, particularly if a claim of this nature is sought to be putforth for the first time in W.P No. 17156/2007, more so when the owner of the land has effected sale of in the year 2000 in favour of a third party.

11. The claim put forth by the appellants is solely on the basis of possession, which they are asserting even as on today notwithstanding surrender order. While we are not in a position to appreciate the submission and to accept that the appellants writ petitioners were in possession of the land for want of proper mechanism before this Court nor such being the function of the writ court, in so far as the argument built up on Section 44 of the Act is concerned, we find that Section 44 comes into play only in a situation where the tenancy is a valid tenancy and person in possession and cultivation is a tenant, as recognized under the Karnataka Land Reforms Act itself and not any person who may just remain in possession of an agricultural land. It is only a tenanted land that vests in the State and not all lands. What is tenancy and who is a tenant in legal terminology in terms of provisions of sub Sections 33 and 34 of Section 2 of the Act indicating the relationship being of tenancy between land lord and tenant; and the domain for determination of this fact having been vested only with land tribunal defined u/s 45 of the Act when the appellants/petitioners admittedly had not invoked the jurisdiction of the tribunal for conferment of occupancy rights as tenants in their favour, that cannot be achieved in this Writ Appeal as the relief sought for is not as recognized and defined under the Act and it is not independent relief.

12. Viewed from any angle, we do not find any mistake or error of law in dismissing the Writ Petition. There is no merit in this appeal and accordingly, we dismiss the Writ Appeal.